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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of:

Implementation of the  
Cable Television Consumer  
Protection and Competition  
Act of 1992

Rate Regulation

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) MM Docket No. 92-266  
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COMMENTS OF THE COMMUNITY ANTENNA TELEVISION  
ASSOCIATION, INC., TO FURTHER NOTICE  
OF PROPOSED RULE MAKING

Community Antenna Television  
Association, Inc.  
3950 Chain Bridge Road

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COMMENTS OF THE COMMUNITY ANTENNA TELEVISION  
ASSOCIATION, INC., TO FURTHER NOTICE  
OF PROPOSED RULE MAKING

1. The Community Antenna Television Association, Inc. ("CATA") hereby submits its comments in the above-captioned proceeding. CATA is one of the principal national trade associations of cable television operators. CATA's membership, representing systems serving more than 45 million subscribers, spans the breadth of the cable industry with regard to system size from the smallest independent "mom and pop" operator to the largest Multiple System Operator. CATA's mandate from the industry, along with vigorous public advocacy of general industry positions and goals, is to assure that the particular difficulties and circumstances of smaller operators are adequately considered in the legislative and regulatory process. It is with that in mind that CATA targets these comments toward the unique problems and prospects of smaller operators which the Commission needs to consider in the process of this extraordinarily complex proceeding.

## INTRODUCTION

2. The Commission began this phase of its rate regulation proceeding because of its theory that by excluding from its sample of cable systems those with less than 30 percent penetration, it might more accurately portray the rates of systems subject to effective competition. CATA maintains that to exclude such systems is contrary to the specific language of the Cable Act of 1992, that Congress fully intended systems below 30 percent penetration be part of the group of systems whose rates are to act as a reference point for Commission regulation, that the Commission does not possess sufficient information about the consequences of the regulations already adopted to contemplate the exclusion of such systems from its sample, and that to do so, thereby reducing the rates of cable systems by an additional 15 percent, will work extreme hardship on the cable industry, particularly smaller systems serving rural areas. Therefore, CATA urges the Commission to abide by the clear language and intent of the Congress and to continue to include in its sample of systems facing effective competition systems with less than 30 percent penetration.

THE STATUTE DOES NOT PERMIT EXCLUSION FROM THE RATE SAMPLE OF  
SYSTEMS WITH UNDER 30 PERCENT PENETRATION.

3. That the Commission believes that some systems with less than 30 percent penetration have rates similar to other systems

not facing competition is beside the point. The first issue to be resolved is what Congress adopted. The Commission is bound by the law. Congress chose three factors to be considered in determining whether cable systems face effective competition. Two of these factors relate to the actual presence in a community of competitive multichannel programmers. If Congress had been concerned only with defining when actual competition occurs, it could have stopped at this point. But instead, Congress permitted a third factor - that fewer than thirty percent of the households in a franchise area subscribe to the system. This factor is clearly intended to be a surrogate for effective competition. It would appear that the Congressional intent was not only to define the circumstances in which actual competition occurs, but also to define a situation in which its concerns about the lack of competition do not apply - a situation not requiring the imposition of rate regulation.

4. Throughout the many proceedings implementing the Cable Act of 1992, the Commission has shown virtually no inclination to depart from what it believes to be Congressional dictate even in instances where Congressional intent was a matter of interpretation. Here, the statute is clear. The Commission is bound by the statute.

5. As the legislative history accompanying the Cable Act makes clear, the new definition of effective competition was designed to reflect the belief of the Congress that most cable

systems possess significant market power. Obviously, the Congress was comfortable with the presumption that a system with less than 30 percent penetration does not possess that kind of market power. In its Further Notice the Commission suggests

appropriate course is not to take it upon itself to re-write legislation, but to report its findings to the Congress so that body can determine whether changes in the law are appropriate. One might presume that such a report would be based not merely on a hurried study of a few hundred cable systems conducted last Fall, but rather on an assessment of how the Commission's new regulations have affected the health of the cable industry. an

ELIMINATION OF SYSTEMS WITH LESS THAN THIRTY PERCENT PENETRATION  
FROM CALCULATIONS DETERMINING THE BENCHMARK NUMBERS WOULD CAUSE  
INDUSTRY HAVOC

9. Much of the cable industry, in particular smaller systems, is struggling to assimilate the Commission's rate regulations and respond in a timely fashion. One of the reasons given by the Commission in staying its June 21, 1993 effective date was to give systems more time to comply with the new rules. Systems are already in the process of re-structuring and re-pricing tiers of service, attempting to notify subscribers and explaining new policies to franchising authorities. Should the Commission now require operators to recalculate their rates, the work already done will have been for nothing.

10. Moreover, as the Commission should be aware, many systems are already considering cost of service showings to justify their rates. Further rate reductions mandated by the Commission would insure that the Commission's hope for an easily administered benchmark system would be dashed. Facing economic disaster, cable systems would be forced to show that their rates are justified by the costs of providing service. Franchising authorities across the country are already questioning whether they should take on the cost of rate regulation. If franchising authorities are now faced with the almost certain prospect of cost of service hearings, it is inevitable that they will abandon the process and the ultimate burden of regulation will devolve

upon the Commission. The Commission has made clear that its own resources, even when augmented by supplemental funds, will be stretched to the limit. Having to analyze hundreds, if not thousands, of cost of service showings will stretch the entire cable regulatory schedule to unmanageable limits. Such a situation would be intolerable for the cable industry and its subscribers.

11. Finally, since the release of the rate regulations, CATA has been contacted by hundreds of small and rural cable systems attempting to fathom the effect of the Commission's regulations on their businesses. It has become clear that many of these systems, far from charging what might be considered monopoly prices, have rates that fall well under the new benchmarks. These systems, often in poorer areas, have never attempted to maximize their profits, because to do so would impose economic burdens on their communities. A fifteen percent rate reduction will force many of these systems to cease operating. The Commission surely cannot intend such a result.

#### CONCLUSION

12. CATA argues that the Commission cannot and should not exclude rates charged by systems with less than 30 percent penetration from its sample used to establish industry benchmarks. As we pointed out, the law clearly prohibits such an

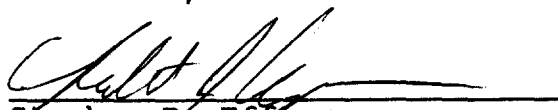


approach. Moreover, to do so would disserve the public by imposing unwarranted economic and administrative burdens on system operators, particularly those operating smaller systems. For these reasons, CATA urges the Commission to continue to treat systems with under 30 percent penetration as an integral part of its sample of systems facing effective competition.

Respectfully submitted,

THE COMMUNITY ANTENNA TELEVISION  
ASSOCIATION, INC.

by:

  
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